In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 245

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS AND THEODORE J. ISAACS, DIRECTOR OF REVENUE, APPELLANTS

v.

UNITED STATES OF AMERICA AND OLIN MATHIESON CHEMICAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

SUPPLEMENTAL MEMORANDUM IN RESPONSE TO JURISDICTIONAL STATEMENT

In our original memorandum in response to the Jurisdictional Statement, we suggested that it would be appropriate to vacate the judgment of the district court and remand the case to that court for further consideration in the light of the intervening developments noted in the memorandum. In their reply brief, appellants, although agreeing that a remand would otherwise have been proper, suggest that the need for further consideration by the district court has been obviated by a modification (on September 22, 1961) by the Illinois Supreme Court of the opin-

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ion in *People ex rel. Holland Co.* v. *Issacs.* In its modified opinion (Appellants' Reply Br. 14–20), the Illinois Supreme Court reaffirmed its view that exempting sales to state instrumentalities from the measure of the tax while not exempting sales to the United States was unconstitutionally discriminatory. It held, however, that the exemption of sales to private charitable organizations was not unconstitutional and that that part of the exemption could remain in effect notwithstanding the invalidation of the state exemption.

We do not believe that the modification of the *Holland* opinion affects the considerations which make a remand of the case to the district court appropriate. While the Illinois Supreme Court has now held that the taxing statute in its present form (with the amendment limiting the exemption provision to private charities) is constitutional, the district court has not yet had an opportunity to consider that question and it need not, of course, follow the views of the Illinois Supreme Court. Moreover, should the district court conclude that the constitutional defect upon which it originally relied has now been remedied, there would remain the question, on which the district court has not yet squarely passed, whether the tax is unconstitutional on the alternative ground urged below that it constitutes a direct tax on the "purchases of the Government itself" (*Kern-Limerick* v. *Scurlock*, 347 U.S. 110, 123).

So that this Court may have the benefit of the district court's views on those questions in light of the events which have transpired since it entered the judgment on appeal, we renew our suggestion that the Court note probable jurisdiction, vacate the judgment below, and remand the cause to the district court for further consideration, continuing, however, the injunctive provisions of the judgment below until the further order of the district court.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JOHN H. CARUTHERS,
Attorney for Olin Mathieson Chemical Corporation.

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